

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
MADISON TELEPHONE COMPANY) AAD No. _____
)
and)
)
GALLATIN RIVER COMMUNICATIONS, LLC)
)
Joint Petition for Waiver of the Definition of)
"Study Area" of the Appendix - Glossary of Part 36)

To: The Commission

JOINT PETITION FOR WAIVER

I. Introduction

Pursuant to Section 1.3 of the Commission's Rules,¹ petitioners, Madison Telephone Company ("Madison") and Gallatin River Communications, LLC ("Gallatin River"), request a waiver of the definition of "study area" contained in the Appendix - Glossary of Part 36 of the Commission's Rules. Petitioners request this waiver to enable Madison to complete its proposed purchase² from Gallatin River of two telephone exchanges in Illinois (the Staunton and Livingston exchanges), combine this new territory with Madison's existing study area (No. 341049), and

¹ 47 C.F.R. § 1.3.

² The transaction between Madison and Gallatin River cannot close until (1) the Illinois Commerce Commission has approved the transaction, (2) the Commission acts on this petition, (3) the Commission acts on the parties' petition for waiver of subscriber notification requirements (to be filed shortly), and (4) the Commission acts on Gallatin River's Section 214 application seeking consent to discontinue service in those exchanges being acquired by Madison, also to be filed shortly. No radio licenses will be transferred in this transaction.

remove the subject exchanges from Gallatin River's current study area (No. 341057). Gallatin

River will continue to provide local telephone exchange and exchange access service in other portions of Illinois.

There are approximately 4300 access lines in the Staunton and Livingston exchanges. Customers in these exchange areas will benefit from the proposed acquisition, due to Madison's commitment to provide quality local exchange and exchange access services in the purchased exchanges. These exchanges are in close geographic proximity to existing Madison exchanges, thus affording operating efficiencies.

Grant of this petition is in the public interest, inasmuch as the factors that the Commission requires for a study area waiver are all present in this case: (1) the parties anticipate that the Illinois Commerce Commission ("ICC") will have no objection to this proposal,³ (2) the transfer of the purchased exchanges from Gallatin River into Madison's existing study area will not adversely impact the USF,⁴ and (3) the public interest will be served by granting the waiver. For these reasons, the petitioners respectfully request that the Commission grant this petition as expeditiously as possible.

³ In their joint request for authorization from the ICC to complete the proposed transaction, the Parties requested the requisite "no objection" confirmation. See Attachment 1. In the interests of expediency, the Parties file the instant petition with the expectation that the ICC will, consistent with its prior actions, grant the request. See infra Section II.1. Petitioners will supplement this filing with the ICC's written confirmation immediately upon receipt.

⁴ 47 C.F.R. § 54.305.

II. Waiver Of The Frozen Study Area Definition Is Warranted.

Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier from segregating territories artificially to maximize high cost support,⁵ the Commission also recognized that changes "that result from the purchase or sale of exchanges in arms-length transactions" do not necessarily raise the concerns which prompted the freeze.⁶ The proposed sale to Madison is an arms' length transaction. There is no relationship whatsoever (neither stock ownership nor common directors or management) between Gallatin River (or any of its affiliates) and Madison.

The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an artificial and illogical result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.⁷ Such a result is contrary to the Commission's policy objective of ensuring that carriers' actual costs are reflected in their accounting, enabling carriers to establish accurately just, reasonable and non-discriminatory rates. Inasmuch as Madison's

⁵ See MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board, Recommended Decision, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, at ¶ 65 (Dec. 12, 1984).

⁶ See, e.g., In the Matter of Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 5 FCC Rcd 7505 (1990).

⁷ Amendment to Part 36 to the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rule Making, 5 FCC Rcd 5974, 5975-76 (1990).

proposed acquisition resulted from an arm's length negotiation process with Gallatin River, the standards for waiver of the freeze are met, and the public interest would be served by grant of this Petition.⁸

1. The ICC Will Have No Objection To Granting This Petition

Petitioners have, in conformance with Commission policy,⁹ requested that the ICC issue a Letter of Non-Opposition confirming that it will have no objection a study area waiver, as evidenced by Attachment 1 hereto.¹⁰ In addition, in accordance with the Commission's expectation that state commissions be informed of proposed changes in study area boundaries, a copy of this petition is being served on the ICC. Based upon the ICC's consistent grant of such requests,¹¹ Petitioners anticipate the issuance of the requested letter in due course.

Petitioners have submitted an application to the ICC for approval of elements contemplated by the proposed transaction, including Madison's application for a Certificate of Exchange Service Authority to provide local exchange and exchange access services in the

⁸ "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁹ See e.g., In the Matter of GTE Southwest Incorporated, Five Area Telephone Cooperative, Inc. and West Plains Telecommunications, L.L.C., Joint Petition for Waiver of Section 61.41(c)(2) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd 13246 (1995).

¹⁰ See Attachment 1.

¹¹ See, e.g., In the Matter of Citizens Telecommunications Company of Illinois and US GTE South Incorporated and GTE North Incorporated, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 Appendix - Glossary of the Commission's Rules, DA 00-2662 (rel. Nov. 11, 2000) ("Citizens-Illinois")(Commission noting receipt of ICC "no objection" confirmation).

purchased exchanges. Madison has also applied for designation as an eligible telecommunications carrier in the purchased exchanges.

2. There Will Be No USF Impact Resulting from this Transaction.

USF distributions to carriers acquiring exchanges from unaffiliated carriers with binding commitments entered after May 7, 1997 are governed by Section 54.305 of the Commission's rules, which provides in pertinent part:

A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.¹²

As the Commission consistently recognizes,¹³ this rule section operates to ensure that, by definition, more recent transactions will have no adverse impact on USF. In any event, Gallatin receives no high cost, local switch or long term support from the USF. Accordingly, USF considerations do not mitigate against grant of waiver request.

3. Granting The Waiver Is In The Public Interest.

The exchanges to be purchased by Madison should not continue to be included in the same study areas as the exchanges to be retained by Gallatin River. Madison's operations will be entirely distinct from those of Gallatin River. Madison intends to provide quality basic services to

¹² 47 C.F.R. §54.305; Universal Service Order, 12 FCC Red at 8943.

¹³ See, e.g., Citizens-Illinois; see also In the Matter of Citizens Telecommunications Company of Iowa and Qwest Corporation Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, DA 00-2221 (rel. Oct. 3, 2000).

the exchange areas it has acquired, consolidating the operation of these exchanges with its existing operations, continuing services available to the current Gallatin River subscribers and expanding the availability of services, including, for example, voice mail. Accordingly, it would be inappropriate for Madison's exchanges to be maintain any artificial affiliation with those exchanges which will continue to be served by Gallatin River. The public interest would be better served if these operationally-distinct exchanges were separated from the exchanges to be retained by Gallatin River and associated with the existing Madison study area.

III. Conclusion

Good cause having been shown, petitioners respectfully request that this petition be granted on an expedited basis so that the transaction between Madison and Gallatin River can be completed, and further request that the National Exchange Carrier Association and the Universal Service Administrative Corporation be directed to take the administrative steps necessary to implement such grant effective on the date that the petitioners close the transaction.

Respectfully submitted,

Madison Telephone Company
Gallatin River Communications, LLC

By:


Sylvia Lesse
Their Counsel

Kraskin, Lesse & Cosson, LLP
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February 23, 2001

ATTACHMENT 1

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

GALLATIN RIVER COMMUNICATIONS, L.L.C.)
AND MADISON TELEPHONE COMPANY)

)
)
)
Joint Petition and Application for approval of sale and)
purchase of telephone properties and related assets used)
in the provision of Telecommunications Services in the)
Staunton and Livingston Exchanges and for approval)
of other Agreements by and between Joint Applicants)
pursuant to Section 7-102 of The Public Utilities Act;)
for the approval and issuance of a Certificate of)
Exchange Service Authority for the Staunton and)
Livingston Exchanges to Madison Telephone Company)
pursuant to Section 13-405 and the cancellation of)
Gallatin River Communications, L.L.C.'s Certificate))
of Exchange Service Authority for the Staunton and)
Livingston Exchanges upon the closing of this sale)
and purchase of assets transaction; for Authority for)
Gallatin River Communications, L.L.C. to discontinue)
the provision of service to the Staunton and)
Livingston Exchanges pursuant to Section 13-406;)
for an Order designating Madison Telephone Company)
as an Eligible Telecommunications Carrier under)
47 U.S.C. Section 214(e)(2) of the Telecommunications)
Act of 1996 for the Staunton and Livingston Exchanges)
and the cancellation of Gallatin River Communications,)
L.L.C.'s designation as an eligible carrier for the Staunton)
and Livingston Exchanges upon closing; for the)
issuance of a Letter of Non-Opposition to Waiver of)
Study Areas; and for the granting of all other necessary)
and appropriate relief.)

Docket No. 01-0071

VERIFIED JOINT PETITION AND APPLICATION

NOW COME, Gallatin River Communications, L.L.C. ("Gallatin River") and Madison Telephone Company ("Madison Telephone") and apply to the Illinois Commerce Commission ("Commission") for approval of the sale by Gallatin River and the purchase by Madison

Telephone Company of telecommunications properties and related assets used in the provision of telecommunications services in the Staunton and Livingston Exchanges and for the approval of other Agreements by and between Gallatin River and Madison Telephone Company all in accordance with Section 7-102 of The Public Utilities Act ("Act"). In addition, Joint Applicants request that the Commission:

A. Grant Madison Telephone a Certificate of Exchange Service Authority, pursuant to Section 13-405 of the Act, for the Staunton and Livingston Exchanges to be acquired from Gallatin River upon the closing of this sale and purchase of assets;

B. Cancel Gallatin River's Certificate of Exchange Service Authority for the Staunton and Livingston Exchanges to be sold to Madison Telephone upon the closing of this sale and purchase of assets;

C. Authorize Gallatin River to discontinue their provision of telecommunications services, including non-competitive local exchange telecommunications services, within the Staunton and Livingston Exchanges upon the closing of this sale and purchase of assets in accordance with Section 13-406 of the Act;

D. Designate Madison Telephone as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2) of the Telecommunications Act of 1996 for the Staunton and Livingston Exchanges and cancel the eligible carrier designation of Gallatin River for the Staunton and Livingston Exchanges upon the closing of this sale and purchase of assets;

E. Issue a Letter of Non-Opposition to the Federal Communications Commission ("FCC") regarding Joint Applicants' request for a study waiver pursuant to 47 CFR § 36; and grant all other necessary and appropriate relief.

In support of this Joint Petition and Application, Joint Applicants' state as follows:

Description of Applicants

1. The legal name and business address of Gallatin River is:

Gallatin River Communications, L.L.C.
100 North Cherry Street
Galesburg, IL 61401
Telephone: 309/345-5367
Facsimile: 309/344-6670

Gallatin River is a Delaware limited liability company owned entirely by Gallatin River Holdings, L.L.C. ("GRH"), which is, in turn, owned by Madison River Telephone Company, L.L.C. ("Madison River"). Gallatin River provides telecommunications services, including local exchange telecommunications services, as an incumbent local exchange carrier in 24 exchanges serving approximately 85,965 access lines pursuant to Certificates of Service Authority granted by the Commission in Docket No. 98-0321. Except for the Staunton and Livingston Exchanges located in south central Illinois, the local exchange operations of Gallatin River are in north central and northern Illinois. Gallatin River presently serves approximately 3,380 access lines in its Staunton Exchange and 870 access lines in its Livingston Exchange.

2. The legal name and business address of Madison Telephone is:

Madison Telephone Company
118 East State Street
P. O. Box 158
Hamel, IL 62046
Telephone: 618/633-2267
Facsimile: 618/633-2713

Madison Telephone is an Illinois corporation and has been providing telecommunications services, including local exchange telecommunications service, as an incumbent local exchange

carrier subject to this Commission's jurisdiction and regulation continuously since 1957. Madison Telephone presently provides service to approximately 1,600 access lines in its Worden, Hamel and Prairietown Exchanges. Madison Telephone is designated an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2) of the Telecommunications Act of 1996 for its service areas consisting of its Worden, Hamel and Prairietown Exchanges by this Commission in Docket No. 97-0407.

**Description of the Proposed Transaction
and Requested Section 7-102 Approvals**

3. Gallatin River and Madison Telephone are entering into an Asset Sale Agreement pursuant to which Gallatin River will sell and Madison Telephone will purchase all of the assets necessary to operate the Staunton and Livingston Exchanges, including relevant authorizations and licenses currently held by Gallatin River. The Asset Sale Agreement will be submitted as a proprietary exhibit in connection with the testimony to be introduced into evidence in this proceeding. The Commission's consent and approval of this transaction is requested pursuant to Section 7-102 of the Act.

Until the transaction is complete, Gallatin River will continue to operate the Staunton and Livingston Exchanges as they do today. The Asset Sale Agreement provides for the closing of the transaction on or before March 31, 2001 after receipt of all necessary governmental and regulatory approvals, including those to be obtained from this Commission and the FCC. Following closing, Gallatin River will continue to operate its remaining 22 exchanges.

To facilitate the transaction and to further ensure the continuity of high quality service to the customers within the Staunton and Livingston Exchanges, Gallatin River and Madison Telephone are entering into a related agreement pursuant to which Madison Telephone will

obtain and Gallatin River will provide certain services. The Commission's consent and approval of this Services Agreement is requested pursuant to Section 7-102 of the Act. The Services Agreement will be submitted as an exhibit in connection with the testimony to be introduced into evidence in this proceeding.

The asset sale transaction and the provision of transitional services pursuant to the Services Agreement will serve the public convenience because Madison Telephone will maintain the provision of existing telecommunications services, including local exchange telecommunications service, and will continue the provision of high quality service to customers within the Staunton and Livingston Exchanges. The Staunton and Livingston Exchanges, while relatively remote from Gallatin River's remaining operations, are contiguous to the Worden, Hamil and Prairietown exchanges of Madison Telephone. Madison Telephone has a long history of providing high quality telecommunications services subject to this Commission's jurisdiction and regulation and is familiar with the Staunton and Livingston service areas, and generally, with the interests and telecommunications needs of customers residing within those Exchanges because of their proximity to the existing operations of Madison Telephone.

Application of Madison Telephone
for Certificate of Exchange Service
Authority Pursuant to Section 13-405

4. Madison Telephone requests that it be granted an additional Certificate of Exchange Service Authority covering the Staunton and Livingston Exchanges, which Madison Telephone will acquire from Gallatin River upon the closing of the sale and purchase of assets. Madison Telephone possesses the necessary technical, financial and managerial resources and abilities to provide local exchange telecommunications services within said Exchanges.

Madison Telephone has an experienced management team with strong technical and financial abilities and all the necessary financial resources and capabilities. Madison Telephone has demonstrated its capabilities by providing local exchange telecommunications services subject to this Commission's jurisdiction and regulation continuously for over 43 years. Madison Telephone will acquire substantially all of the assets of Gallatin River in the Staunton and Livingston Exchanges, including central office facilities, outside plant facilities and other property used by Gallatin River to provide service in the Staunton and Livingston Exchanges.

Revision to Section 13-405
Certificate of Exchange Service
Authority of Gallatin River

5. Upon completion of the sale of assets to Madison Telephone, Gallatin River will no longer provide local exchange services within the Staunton and Livingston Exchanges. Gallatin River requests that its Section 13-405 Certificate of Exchange Service Authority be amended so as to revise or delete the Staunton and Livingston Exchanges from its authorized service areas to be effective upon the closing of the transaction.

Request of Gallatin River for Authority to Discontinue
Its Services to the Staunton and Livingston Exchanges
Pursuant to Section 13-406 of the Act

6. Upon the closing of the proposed transaction, Gallatin River will cease to have assets in the Staunton and Livingston Exchanges and will no longer be able to provide non-competitive local exchange service to customers in the Staunton and Livingston Exchanges purchased by Madison Telephone. After the transaction closes, Madison Telephone will provide telecommunications service to the subscribers in these areas. Accordingly, subscribers will not be deprived of any necessary or essential telecommunications service or access thereto.

Therefore, Gallatin River requests that the Commission find that it is not contrary to the public interest to grant Gallatin River permission, pursuant to Section 13-406 of the Act, to discontinue providing non-competitive services in the Staunton and Livingston Exchanges that Madison Telephone will acquire at the closing of the transaction.

Request for Order Designating Madison Telephone Company as an Eligible Telecommunications Carrier for the Staunton and Livingston Exchanges Pursuant to Section 214(e) of the Communications Act of 1934, As Amended, in 47 U.S.C. § 214(e) effective upon the closing of the Transaction and the Simultaneous Cancellation of Gallatin River's Designation as an Eligible Telecommunications Carrier for the Staunton and Livingston Exchanges

7. Gallatin River is currently designated as an Eligible Telecommunications Carrier, pursuant to Section 214(e) of the Communications Act of 1934, as amended, in 47 U.S.C. § 214(e) in the Staunton and Livingston Exchanges, as well as in the other exchanges that Gallatin River serves. Madison Telephone requests that this Commission designate Madison Telephone as the Eligible Telecommunications Carrier for the Staunton and Livingston Exchanges that it will acquire upon the receipt of all necessary approvals and the closing of this transaction. Madison Telephone is presently designated as an Eligible Telecommunications Carrier for its present service areas consisting of its Worden, Hamil and Prairietown Exchanges pursuant to this Commission's Order in Docket No. 97-0407. Madison Telephone will present evidence demonstrating that it meets all of the criteria to be designated an Eligible Telecommunications Carrier for the Staunton and Livingston Exchanges upon closing. The designation of Gallatin River as an Eligible Telecommunications Carrier for the Staunton and Livingston Exchanges should be canceled upon the closing of the transaction.

Request for an Interim Order in this
Docket or for a Letter from this
Commission to the FCC Indicating
Non-Opposition for a Study Area Waiver

8. This transaction is conditioned upon receipt of all necessary approvals from both this Commission and the FCC. The approvals that will be sought from the FCC will include a petition for a study area waiver. The FCC's policy regarding study area waivers is not to accept petitions for waiver until the state regulatory agency has stated that it does not object to changes in the study area boundaries. For this reason, Gallatin River and Madison Telephone requests that the Commission, as soon as practicable, issue an Interim Order in this docket or other statements indicating that the Commission does not object to the FCC's granting of the necessary study area waiver. Gallatin River and Madison Telephone requests that such an Interim Order or other statement of non-objection be issued prior to an Order approving the transaction so the parties can move on a parallel track at the FCC during the time this Commission considers this Joint Petition and Application.

Service On Joint Petitioners and Joint Applicants

9. Notices and other pleadings in connection with this Joint Petition and Application should be served on the Joint Petitioners and Joint Applicants, as follows:

For Gallatin River:

Gary D. Hamilton
President

Gallatin River Communications, L.L.C.
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With a copy to:

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Corporate Attorney
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springem@madisonriver.net

For Madison Telephone:

Robert W. Schwartz
President
Madison Telephone Company
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For Joint Applicants:

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WHEREFORE, the Joint Petitioners and Joint Applicants pray that the Illinois Commerce Commission enter an Order granting the relief sought herein and granting all other necessary approvals and all other appropriate relief.

DATED this _____ January, 2001.

Respectfully submitted,

GALLATIN RIVER COMMUNICATIONS,
L.L.C. and MADISON TELEPHONE
COMPANY

By: _____
One of the Attorneys for Joint Applicants

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DECLARATION OF ROBERT W. SCHWARTZ

I, Robert W. Schwartz, President of Madison Telephone Company, do hereby declare under penalty of perjury that I have read the foregoing "Joint Petition for Waiver" and that, with respect to the information provided with respect to Madison Telephone Company, the facts stated therein are true and correct, to the best of my knowledge, information and belief.


Robert W. Schwartz

Dated: 2/8/01

DECLARATION OF MICHAEL SKRIVAN

I, Michael Skrivan, Vice President of Gallatin River Communications, LLC, do hereby declare under penalty of perjury that I have read the foregoing "Joint Petition for Waiver" and that, with respect to the information provided with respect to Gallatin River Communications, LLC, the facts stated therein are true and correct, to the best of my knowledge, information and belief.




Michael Skrivan

Dated: February 21, 2001

CERTIFICATE OF SERVICE

I, Sandi Griffiths, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Joint Petition For Waiver" was served this 23rd day of February, 2001, by hand delivery, to the following parties:



Sandi Griffiths

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